IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 7757 of 1995

Between:
Sri Radhakrishn & co,
rep.by its Managing Parther K.Krishna Moorthy,
S/o Chandraiah. Hindu.
Aruna Aprtments, Flat-306, Red Hills,
Hyderabad.

..... PETITIONER

AND

1 The Prl.Secretary, Panchayat Raj Rural Development,
Govt. of AP, Secretriat Buildings, Hyderabad.
2 The Chief Engineer (Incharge of CRP Works),
Panchayat Raj Department
Erramanzil Colony, Hyderabad
3 The Superintendent Engineer,
Panchyat Raj Department, Bandar Road,
Vijayawada.
4 The Executive Engineer,
Panchayat Raj Department, Chilakalpudi,
Machilipatnam-2.

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RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction especially one in the nature of writ of mandamus declaring the action of the respondents with holding the earnest money deposit from other works not relating to the works mentioned in the tender notice No. 1-CE-CRP.PR-1010, dated 26-3-1991 without notice and opportunity and without having any power, as illegal arbitrary, capricious, void and opposed principles of natural justice and consequently direct the respondents to pay the amounts withhold by them, forthwith with interest at 12% p.a.

Counsel for the Petitioner: MR.K.V.BHANU PRASAD

Counsel for the Respondents: G.P. FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

ORDER:

The Writ Petition is filed seeking declaration that the action of the respondents in withholding the Earnest Money Deposit from other works not relating to the works mentioned in the Tender Notice No.1-CE-CRP.PR-1010, dated 26-03-1991 without any notice as illegal and arbitrary.

It is the case of the petitioner that the tender notification was issued on 26-03-1991. The tender schedule of the petitioner was received by the respondents on 02-05-1991 and after opening the same, the schedule was accepted on 18-07-1991 and the same was communicated to the petitioner on 29-07-1991.

It is the contention of the learned counsel for the petitioner that since tender schedule was opened and accepted on
18-07-1991, the agreements have to be entered into within 90 days from that date onwards and since there was no such communication within 90 days to the petitioner, he could not enter into any agreement with regard to the present work, in which he deposited the Earnest Money Deposit and consequently, he could not do the work. Hence, he is entitled for return of Earnest Money Deposit. He further contends that at a later point of time,
a telegram was said to have been received on 29-07-1991, on which day the respondents sent communication regarding the acceptance. It is his further contention that on this ground the petitioner cannot be deprived of the Earnest Money Deposit. It is totally arbitrary inasmuch as no notice had been given and further the respondents cannot, on this ground,

withhold the Earnest Money Deposit from the amounts to be paid to the petitioner in relation to other works.

Counter affidavit has been filed by the respondents *inter alia* stating that the petitioner offered tender schedules to all the seven works covered by the same tender notification. He was found to be the lowest tenderer in all the seven items. But he entered into agreements only with regard to three works. For the reasons best known to the petitioner, he did not opt to enter into any agreement with regard to other four works. Therefore, having been put to loss, because of the act on the part of the petitioner in not entering into agreements in time with regard to other four works, the respondents are entitled to withhold the Earnest Money Deposit from the monies to be paid to the petitioner in relation to other works, as per Clause 60 of the Andhra Pradesh Detailed Standard Specifications. However, the contention of the learned counsel for the petitioner is that Clause 60 of the said specifications had no application in the present set of facts.

The learned Government Pleader for Panchayat Raj and Rural Development, however, contended as stated in the counter affidavit that having accepted seven works covered by the same tender notification, the petitioner informed the changed address on 03-10-1991 vide his letter dated 07-11-1991. But the fact of communication regarding acceptance by way of telegram and other registered letters sent to the address given by the petitioner, is neither stated in the affidavit nor is effectively denied by the petitioner by way of rejoinder to the counter affidavit.

The learned counsel for the petitioner contends that he could not enter into any agreement with regard to other four works only upon the request made by the respondents. But no such letter is pressed into service or counter by way of filing any rejoinder.

The above said fact that the petitioner could not enter into any agreement with regard to other four works at request of the respondents

themselves, is a question of fact, which could not be established apparently by the petitioner. However, this Court exercising its jurisdiction under Article 226 of the Constitution of India cannot go into these questions of fact. If really there is any grievance for the petitioner, in the present set of facts, the same can be remedied by way of filing a civil suit or raising a dispute before an arbitrator as the case may be, in accordance with law. Hence, I do not find any reason to continue the writ petition.

The writ petition is accordingly dismissed with a liberty to the petitioner to work out his remedies elsewhere, in accordance with law. No costs.

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D.S.R. VARMA, J

16th September, 2004
lsn

To

1 The Prl.Secretary, Panchayat Raj Rural Development,
Govt. of AP, Secretriat Buildings, Hyderabad.
2 The Chief Engineer (Incharge of CRP Works),
Panchayat Raj Department
Erramanzil Colony, Hyderabad
3 The Superintendent Engineer,
Panchyat Raj Department, Bandar Road,
Vijayawada.
4 The Executive Engineer,
Panchayat Raj Department, Chilakalpudi,
Machilipatnam-2.
5. Two CCs to G.P. for Panchayat Raj and Rural Development,
High Court buildings, Hyderabad (OUT).
6. Two CD copies.